

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re application of Douglas A. Wood

October 9, 2009

Serial Nbr: 10/634,701

Filed: August 5, 2003

For: Identifying Resource and Data Instances in Management Systems

Art Unit: 2165

Examiner: Mark A. Radtke

**APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR
RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE
OF ALLOWANCE (37 CFR §1.705)**

Mail Stop Patent Ext.
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Request under 37 CFR §1.705(b) for Reconsideration of the Patent Term Adjustment of **1095 days** indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) that was attached to the Notice of Allowance mailed on September 24, 2009. It is believed that the correct Patent Term Adjustment to which Applicant is entitled is **1140 days**.

The Issue Fee for the subject application has not yet been paid, as required by 37 CFR

§1.705(b).

A request to charge the fee set forth in §1.18(e) to Deposit Account **090461** is submitted herewith, as required by 37 CFR §1.705(b)(1). Authorization is also hereby granted to charge any additional fees or to credit any overpayment to said Deposit Account.

Applicant submits herewith a “Statement of Facts For Patent Term Adjustment (37 CFR §1.705(b)(2)))”.

Respectfully submitted,

/Marcia L. Doubet/

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Attachment: Statement of Facts For Patent Term Adjustment (37 CFR §1.705(b)(2)))

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Statement of Facts For Patent Term Adjustment (37 CFR §1.705(b)(2))

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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Statement of Facts is submitted as required by **37 CFR §1.705(b)(2)** in support of the “APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 CFR §1.705)” to which this Statement is attached.

37 CFR §1.705(b)(2)(i)

Correct Patent Term Adjustment: The Patent Term Adjustment on the Determination

of Patent Term Adjustment under 35 U.S.C. 154(b) that was attached to the Notice of Allowance mailed on September 24, 2009 is **1095 days**. Applicant respectfully submits that this determination of **1095 days** is in error. It is respectfully submitted that the correct Patent Term Adjustment is **1140 days**.

Basis Under §1.702: The basis under which Applicant seeks Patent Term Adjustment is **§1.702(a)(2)**, failure of the Office to respond to a reply under §1.111 not later than four months after the date on which the reply was filed.

37 CFR §1.705(b)(2)(ii)

Relevant Dates under §1.703(a)(2): The relevant dates for a period of adjustment under **§1.702(a)(2)** are as follows:

A Final Rejection was mailed on February 9, 2009 (hereinafter, “the Final Rejection”). Applicants filed a reply under §1.111 on April 10, 2009. According to **§1.702(a)(2)**, a response from the Office was therefore due no later than August 10, 2009. However, a response – in the form of a Notice of Allowance – was not mailed until September 24, 2009, which is a delay of **45 days**. Supporting facts will now be set out.

Applicants responded to the Final Rejection by timely filing an Amendment and Request for Continued Examination, along with the requisite fee under 37 CFR §1.17(e), on April 10, 2009. Filing of the Request for Continued

Examination withdrew the finality of the Office Action; see 37 CFR §1.114(d).

Accordingly, the Amendment filed on April 10, 2009 (hereinafter, “the Amendment”) is properly considered as a reply under 37 CFR §1.111.

Subsequent to the filing of the Amendment on April 10, 2009, the Office mailed a Non-Final Rejection on June 25, 2009 (hereinafter, “the Non-Final Rejection”). However, the Non-Final Rejection was void *ab initio*, due to reliance therein on a reference that did not qualify under 35 U.S.C. §102 or §103.

Accordingly, the Non-Final Rejection was withdrawn/vacated by the Examiner, as noted in the Image File Wrapper as of September 21, 2009 and as stated in the Interview Summary which is provided in the Notice of Allowance mailed on September 24, 2009.

Because the Non-Final Rejection mailed on June 25, 2009 was void *ab initio*, the Non-Final Rejection is considered to not have been mailed. Therefore, the appropriate time period for Patent Term Adjustment under **§1.703(a)(2)** begins on April 10, 2009 when the Amendment was filed and ends on September 24, 2009 when the Notice of Allowance was mailed. As noted above, this time period exceeds the four-month time period set out in **§1.703(a)(2)** by **45 days**.

Accordingly, Applicant hereby respectfully requests that this additional **45 days** be added to the previously-computed Patent Term Adjustment of **1095 days**,

for a total Patent Term Adjustment of **1140 days**.

37 CFR §1.705(b)(2)(iii)

Any patent granted on the subject application is not subject to a Terminal Disclaimer.

37 CFR §1.705(b)(2)(iv)

As to circumstances during the prosecution of the subject application constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in §1.704, Applicant respectfully submits that there were none. (See 37 CFR §1.705(b)(2)(iv)(B).)

Respectfully submitted,

/Marcia L. Doubet/

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